Office-Supreme Court, U.S.
FILED
DEC 15 1982
ALEXANDER L. STEVAS,
CLERK

No. 82-777

IN THE

Supreme Court of the United States

OCTOBER TERM, 1982

IN THE MATTER OF
GARY AIRCRAFT CORPORATION,
Debtor

GENERAL DYNAMICS CORPORATION,
Petitioner

v.

GARY AIRCRAFT CORPORATION,
Respondent

On Writ Of Certiorari To The
United States Court Of Appeals
For The Fifth Circuit

BRIEF IN OPPOSITION

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No. 82-777

IN THE MATTER OF GARY AIRCRAFT CORPORATION,
Debtor

GENERAL DYNAMICS CORPORATION,
Petitioner

v.

GARY AIRCRAFT CORPORATION,
Respondent

LIST OF PARTIES

Pursuant to the Supreme Court Rule 28.1, Respondent lists the following parties, not named in the caption, which have an interest in the outcome of this case:

Victoria Bank and Trust Company
P.O. Box 1698
Victoria, Texas

Arthur W. Stewart
President, Gary Aircraft Corporation
Hondo Municipal Airport
Hondo, Texas

Frederick B. Ayer & Associates, Inc.
200 Park Avenue
New York, New York

Further, Respondent lists the following as its affiliates and subsidiaries (except wholly owned subsidiaries):

Madison Equipment Corporation
Hondo Municipal Airport
Hondo, Texas

Aircraft Machinery Corporation
Hondo Municipal Airport
Hondo, Texas

TABLE OF CONTENTS

	Page
List of Parties	i
Table of Contents	ii
Table of Authorities	iii
Opinions Below	2
Statement of The Case	2
Summary of Argument	2
Argument	4
I. THE DECISIONAL CONFLICT BETWEEN THE SUPREME COURT OF CALIFORNIA AND THE FEDERAL COURTS OF APPEAL IS NOT OF SUFFICIENT IMPORTANCE TO MERIT REVIEW BY THIS COURT	4
II. THERE IS NO CONFLICT AMONG THE COURTS OF APPEAL	7
III. THE ALLEGED CONFLICTS IN OTHER HOLDINGS INVOLVE DIFFERENT ISSUES AND DO NOT MEET THE CRITERIA FOR THE GRANTING OF A WRIT OF CERTIORARI	8
Conclusion	10
Certificate Of Service	11
Appendix	

TABLE OF AUTHORITIES

CASES: **Page**

Bank of Hendersonville v. Red Baron Flying Club, Inc., 571 S.W.2d 152 (Ct. App. Tenn. 1977), *cert. denied*, 439 U.S. 1089, 99 S. Ct. 872 (1979) 4

Bank of Lexington v. Jack Adams Aircraft Sales, Inc., 570 F.2d 1220 (5th Cir. 1978) 3

Bitzer-Croft Motors, Inc. v. Pioneer Bank & Trust Company, 401 N.E. 2d 1340 (App. Ct. Ill. 1980) 4

Carolina Aircraft Corp. v. Commerce Trust Company, 289 So.2d 37 (Fla. Dist. Ct. App. 1974) 6

Cessna Finance Corp. v. Skyways Enterprises, Inc., 23 UCC Rep. Serv. 1015 (Ky. Ct. App. 1978), *aff'd*, 580 S.W.2d 491 (Ky. 1979) 4

CIM International v. United States, 641 F.2d 671 (9th Cir. 1980) 3,7,8

Danning v. Pacific Propeller, Inc. (In re Holiday Airlines), 620 F.2d 731 (9th Cir.), *cert. denied*, 449 U.S. 900 (1980) 3,6-8

Danning v. World Airways, Inc. (In re Holiday Airlines), 647 F.2d 977 (9th Cir. 1981), *cert. denied*, --- U.S. ---, 102 S. Ct. 1009 (1982) 7,8

Dowell v. Beech Acceptance Corp., 3 Cal. 3d 544, 91 Cal. Rptr. 1, 476 P.2d 401 (Calif. 1970), *cert. denied*, 404 U.S. 823 (1971) 2,3,5-10

Feldman v. Philadelphia National Bank, 408 F. Supp. 24 (E.D. Pa. 1976) 4

CASES: **Page**

Feldman v. First National City Bank, 368 F. Supp. 1333 (S.D.N.Y. 1974) 4

Gary Aircraft Corporation v. General Dynamics Corporation (In re Gary Aircraft Corporation), 681 F.2d 365 (5th Cir. 1982) 3,6

Haynes v. General Electric Credit Corp., 432 F. Supp. 763 (W. D. Va. 1977), *aff'd per curiam*, 582 F.2d 869 (4th Cir. 1978) 3,6,7

Idabel National Bank v. Tucker, 544 P.2d 1287 (Ct. App. Okla. 1975) 5

Michigan National Bank of Detroit v. Maierhoffer, 382 So .2d 318 (Fla. Dist. Ct. App. 1978) 6

Northern Illinois Corp. v. Bishop Distributing Co., 284 F. Supp. 121 (W.D. Mich. 1968) 4

O'Neill v. Barnett Bank of Jacksonville, 360 So. 2d 150 (Fla. Dist. Ct. App. 1978) 6,9

Sanders v. M. D. Aircraft Sales, Inc., 575 F.2d 1086 (3rd Cir. 1978) 3,7

Southern Jersey Airways, Inc. v. National Bank of Secaucus, 261 A.2d 399 (Superior Ct. N. J. 1970) 5

State Securities Company v. Aviation Enterprises, Inc., 355 F.2d 225 (10th Cir. 1966) 3

Suburban Trust & Savings Bank v. Campbell, 250 N.E.2d 118 (Ct. Com. Pl. Ohio 1969) 5

Sun Bank v. Snell (In re Cone) 11B.R. 925 (M.D. Fla. 1981) 6,9

CASES: **Page**

Texas National Bank of Houston v. Aufderheide, 235 F. Supp. 599 (E.D. Ark. 1964) 4

United States Aviation Underwriters, Inc. v. WTAE Flying Club, 300 F. Supp. 341 (W.D. Pa 1969) 4

STATUTE:

Federal Aviation Act of 1958 (49 U.S.C. §1401, *et seq.*) ..... *passim*

MISCELLANEOUS:

1964 *U.S. Code Congressional and Administrative News*, Vol. 2, pp. 2322-2326 5

Ganz, *Code Secured Transactions and the Federal Aviation Act - A Limited Preemption*, 14 UCC L.J. 3 (1981) 6,9

Sigman, *The Wild Blue Yonder: Interests in Aircraft Under Our Federal System*, 46 S. CAL. L. REV. 316 (1973) 9

Taking the Lender for a Ride: Section 1403 of the Federal Aviation Act and the Buyer in the Ordinary Course of Business, 36 WASH. & LEE L. REV. 205 (1979) 6,9

37 J. AIR LAW & COMMERCE 252 (1971) 9

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v.

GARY AIRCRAFT CORPORATION,
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On Writ Of Certiorari To The
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For The Fifth Circuit

BRIEF IN OPPOSITION

Respondent Gary Aircraft Corporation respectfully submits that a writ of certiorari to review the judgment of the United States Court of Appeals for the Fifth Circuit in *Gary Aircraft Corporation v. General Dynamics Corporation* (No. 81-1378, *In the Matter of Gary Aircraft Corporation)* should not be granted.

OPINIONS BELOW

In addition to the opinions mentioned in the Petition for a Writ of Certiorari, the Bankruptcy Court entered an *Errata to Memorandum Order and Opinion Filed October 4, 1979* (App. A).

STATEMENT OF THE CASE

Petitioner General Dynamics Corporation incorrectly states that one of the two airplanes in question was transferred by Arthur W. Stewart to Respondent Gary Aircraft Corporation on March 12, 1982. As found by the Bankruptcy Court, both Airplanes N8221H and N8222H were transferred on November 7, 1982. Otherwise, Respondent accepts the Statement of the Case contained in the Petition for a Writ of Certiorari.

SUMMARY OF ARGUMENT

At issue is whether Section 503 of the Federal Aviation Act of 1958 (the "FAA"), 49 U.S.C. § 1403, was intended by Congress to establish substantive rules of lien priority, or whether it was intended simply to establish a central recording system for interests in aircraft. The opinion of the Fifth Circuit, based upon a thorough review of the legislative history, held that no substantive rules of lien priority were established by the FAA, and that such priorities were determined by state law.

Review by this Court is not justified by the conflict between the decision below and that of the California Supreme Court in *Dowell v. Beech Acceptance Corporation*, 13 Cal. 3d 544, 91 Cal. Rptr. 1, 476 P.2d 401 (Calif. 1970), *cert. denied*, 404 U.S. 823 (1971). The *Dowell* Court failed to analyze the legislative

history of the FAA. This fundamental flaw nullifies *Dowell's* precedential value and makes its conflict with the decision below insignificant.

The decision below does not conflict with the opinion of the Ninth Circuit in *Danning v. Pacific Propeller, Inc. (In re Holiday Airlines Corporation)*, 620 F.2d 731 (9th Cir.), *cert. denied*, 449 U.S. 900 (1980), as suggested by Petitioner. The *Pacific Propeller* court applied state law, in accord with the opinion below. Further, the Courts of Appeal for the Third,[1] Fourth,[2] Fifth,[3] Ninth,[4] and Tenth[5] Circuits have agreed that aircraft lien priorities are governed by state law, not by the FAA. Other federal and state court cases relied upon by Petitioner are not on point because they arose before the widespread adoption of the Uniform Commercial Code, dealt with other issues (predominantly possessory mechanics' liens), or reached aberrant results by failing to analyze the legislative history of the FAA.

In any event, it has now become so well established that the FAA does not govern priority of aircraft liens that no review by this Court is needed.

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[1] *Sanders v. M. D. Aircraft Sales, Inc.*, 575 F.2d 1086 (3rd Cir. 1978).

[2] *Haynes v. General Electric Credit Corp.*, 432 F. Supp 763 (W.D. Va. 1977), *aff'd per curiam*, 582 F.2d 869 (4th Cir. 1978).

[3] *Gary Aircraft Corporation v. General Dynamics Corporation (In re Gary Aircraft Corporation)*, 681 F.2d 365 (5th Cir. 1982); *Bank of Lexington v. Jack Adams Aircraft Sales, Inc.*, 570 F.2d 1220 (5th Cir. 1978).

[4] *CIM International v. United States*, 641 F.2d 671 (9th Cir. 1980).

[5] *State Securities Company v. Aviation Enterprises, Inc.*, 355 F.2d 225 (10th Cir. 1966).

ARGUMENT

I.
THE DECISIONAL CONFLICT BETWEEN THE SUPREME COURT OF CALIFORNIA AND THE FEDERAL COURTS OF APPEAL IS NOT OF SUFFICIENT IMPORTANCE TO MERIT REVIEW BY THIS COURT

This Court has indicated that a writ of certiorari will be granted only if special and important reasons exist therefor.[6] Petitioner correctly notes that a decisional conflict exists between the Supreme Court of California and several federal circuits as to whether FAA establishes rules of priority for aircraft liens. However, no special and important reasons exist for review by this Court. Because there is abundant judicial authority holding that state law governs aircraft lien priorities, little benefit would result from further review of the issue by this Court. Five federal courts of appeal[7] and two state courts of last resort[8] have taken the position that the FAA does not govern aircraft lien priorities. Several federal district courts and intermediate state courts are in accord.[9]

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[6] Rule 17.1, *Rules of the Supreme Court of the United States.*

[7] *See* notes 1-5, *supra.*

[8] *Bank of Hendersonville v. Red Baron Flying Club, Inc.*, 571 S.W.2d 152 (Ct. App. Tenn. 1977), *cert. denied*, 439 U.S. 1089; *Cessna Finance Corp. v. Skyways Enterprises, Inc.*, 23 UCC Rep. Serv. 1015 (Ky. Ct. App. 1978), *aff'd*, 580 S.W. 2d 491 (Ky. 1979).

[9] *Feldman v. Philadelphia National Bank*, 408 F. Supp. 24 (E.D. Pa. 1976); *Feldman v. First National City Bank*, 368 F. Supp. 1333 (S.D.N.Y. 1974); *United States Aviation Underwriters, Inc. v. WTAE Flying Club*, 300 F. Supp. 341 (W.D. Pa. 1969); *Northern Illinois Corporation v. Bishop Distributing Company*, 284 F. Supp. 121 (W.D. Mich. 1968); *Texas National Bank of Houston v. Aufderheide*, 235 F. Supp. 599 (E.D. Ark. 1964); *Bitzer-Croft Motors, Inc. v. Pioneer*

The primary authority for Petitioner's view of the FAA is *Dowell v. Beech Acceptance Corporation, supra.* In *Dowell* no effort was made to analyze the legislative history of the FAA. Had the *Dowell* Court reviewed this legislative history it might have discovered that the Senate, in debating the Civil Aeronautics Act (from which FAA was derived virtually *in haec verba*), deleted from Section 502 (now Section 503 of the FAA) a provision that would have afforded priority to recorded aircraft lien instruments.[10] Thus, Congress considered regulating the priority of recorded aircraft liens, but instead elected to leave this area to state law.

In 1964 the FAA was amended to delete from Section 503(c) (49.U.S.C. § 1403) the requirement that instruments presented for recording be acknowledged before a notary public, and to add Section 506 (49.U.S.C. § 1406), which provides that state law governs the validity of an instrument required to be recorded under the FAA. The legislative history of this amendment is set out in Appendix B hereto,[11] including a letter to the Honorable Warren G. Magnuson from N. E. Halaby, Administrator of the Federal Aviation Administration, in which it is stated (Appendix B, page B-8) (emphasis added):

> While recordation does afford notice to the world of the existence of an instrument affecting title, *it does not purport to establish the substantive validity of the instrument. As is the case with other recording systems, substantive validity of a recorded instrument remains a question of local law....*

Bank & Trust Company, 401 N.E.2d 1340 (App. Ct. Ill. 1980); *Southern Jersey Airways, Inc. v. National Bank of Secaucus*, 261 A.2d 399 (Superior Ct. N.J. 1970); *Suburban Trust & Savings Bank v. Campbell*, 250 N.E.2d 118 (Ct. Com. Pl. Ohio 1969); *Idabel National Bank v. Tucker*, 544 P.2d 1287 (Ct. App. Okla. 1975).

10 83 CONG. REC. 6757 (1938)

11 As taken from 1964 *U.S. Code Congressional and Administrative News*, Vol. 2, pp. 2322-2326.

The other cases favorable to Petitioner, *O'Neill v. Barnett Bank of Jacksonville,* 360 So. 2d 150 (Fla. Dist. Ct. App. 1978) and *Sun Bank v. Snell (In re Cone),* 11 B.R. 925 (M.D. Fla. 1981), similarly make no effort to review the legislative history of the FAA. Moreover, *O'Neill* is inconsistent with *Carolina Aircraft Corp. v. Commerce Trust Company,* 289 So. 2d 37 (Fla. Dist. Ct. App. 1974), and has been limited to its facts by *Michigan National Bank of Detroit v. Maierhoffer,* 382 So. 2d 318, 321 (Fla. Dist. Ct. App. 1978). And *Sun Bank* was wrongly decided. As explained by the Fifth Circuit's opinion below, *Sun Bank* misinterpreted *Pacific Propeller* by concluding the FAA preempts state aircraft lien priority law. 681 F.2d 370 n.5. *Pacific Propeller* suggests that *if* priority provisions were contained in the FAA, they would prevail over inconsistent state law. However, *Pacific Propeller* does not hold that the FAA actually contains such priority provisions, and *Pacific Propeller* applied state priority law.

Because *Dowell* failed to review and analyze the legislative history of the FAA it has been harshly criticized by courts and commentators alike.[12] Decisional conflicts between *Dowell* and subsequent cases are not new. Until *O'Neill, Dowell* had not been followed, while numerous federal and state courts ruled that state law determined aircraft lien priorities.[13] The *Dowell* decisional conflict has little troubled the courts facing the priority issue. Thus, there are no special or important reasons justifying review by this Court.

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[12] *See e.g., Gary Aircraft Corporation v. General Dynamics Corporation,* 681 F.2d at 370, n. 5; *Haynes v. General Electric Credit Corp.,* 432 F. Supp. at 768; *Taking the Lender for a Ride: Section 1403 of the Federal Aviation Act and the Buyer in the Ordinary Course of Business,* 36 WASH. & LEE. L. REV. 205, 221-222 (1979); Gantz, *Code-Secured Transactions and the Federal Aviation Act - A Limited Preemption,* 14 UCC L.J. 3, at 13-17 and 22.

[13] *See* notes 1-5, 8, and 9, *supra.*

II.
THERE IS NO CONFLICT AMONG THE COURTS OF APPEAL

Petitioner's assertion that the Fifth Circuit's decision below conflicts with that of Ninth Circuit in *Danning v. Pacific Propeller, supra,* is incorrect for two reasons. First, *Pacific Propeller* actually applied state law to determine lien rights in an aircraft; the case does not hold that the FAA contains any priority provisions. Second, as admitted on page 6 of the Petition for a Writ of Certiorari, *Pacific Propeller* only deals with the *validity* of a claimed lien – not its *priority*. Therefore, any discussion of the FAA as it relates to lien priority is mere *dicta*, not a holding of the Ninth Circuit.

While *Pacific Propeller* is not crystal clear, the Ninth Circuit's position on aircraft lien priorities is. In two decisions handed down after *Pacific Propeller* the Ninth Circuit has held that the FAA does not establish priority rules for aircraft liens. In *CIM International v. United States,* 641 F.2d 671, 675 n.6 (9th Cir. 1980), the Ninth Circuit relied upon *Pacific Propeller* for the proposition that the FAA does not preempt state priority laws, and in *Danning v. World Airways, Inc. (In re Holiday Airlines Corporation),* 647 F.2d 977, (9th. Cir 1981), the Ninth Circuit rejected the result in *Dowell* (647 F.2d at 980):

> . . .Several decisions upholding the rights of a purchaser in the ordinary course of business under state law as against holders of floor plan financing liens recorded under federal law employ the same approach. *See Sanders v. Aircraft Sales Inc.,* 575 F.2d 1086 (3d Cir. 1978); *Haynes v. General Electric Credit Corporation,* 582 F.2d 869 (4th Cir. 1978). Both *Sanders* and *Haynes* declined to read section 1406 so as to preempt provisions of the relevant state's version of the Uniform Commercial Code which were designed to protect purchasers in the ordinary course of business. The Supreme Court of California has

> reached the opposite conclusion. *See Dowell v. Beech Acceptance Corp., Inc.*, 3 Cal. 3d 544, 91 Cal., Rptr. 1, 476 P.2d 401 (1970). The financing agency prevailed over the buyer in the ordinary course of business because of the preemptive effect accorded section 1406 by the California court.
>
> Despite the reference of 49 U.S.C. § 1406 to state law as determining the validity of liens recorded under section 1403, we are not bound by state court decisions on the preemptive effect of federal law....

CIM and *World Airways*, do not conflict with the Fifth Circuit's decision below. These cases, as well as *Pacific Propeller*, agree with those of the Third, Fourth, Fifth, and Tenth Circuits in holding that the FAA does not establish substantive rules of priority for aircraft liens.

III.
THE ALLEGED CONFLICTS IN OTHER HOLDINGS INVOLVE DIFFERENT ISSUES AND DO NOT MEET THE CRITERIA FOR THE GRANTING OF A WRIT OF CERTIORARI

Many of the cases cited by Petitioner in support of its argument on pages 7-10 of the Petition for a Writ of Certiorari involve issues unrelated to the question here presented. Also, many of these cases were decided prior to the widespread enactment of the Uniform Commercial Code, and others deal with the issued of the *validity* (rather than the *priority*) of unrecorded mechanics' and artisans' liens. As a result, the conflicts alleged by Petitioner either do not exist, or are of no real importance.

There are only two lines of cases involving the issue of preemption by the FAA of the Uniform Commercial Code's

"buyer in the ordinary course of business" doctrine; *Dowell v. Beech Acceptance Corporation* (and its progeny *O'Neill v. Barnett Bank* and *Sun Bank v. Snell*) on the one hand, and the decisions of five federal circuits, two state courts of last resort, five federal district courts, and four intermediate state courts on the other.[14] There is remarkable uniformity in the decisions of these latter courts in support of the decision below. Furthermore, the doctrine propounded in *Dowell* has been criticized and rejected by legal commentators.[15] It is questionable whether even the California courts would follow *Dowell* at this time.

Finally, a conflict between intermediate state and lower federal courts does not constitute grounds for the granting of a writ of certiorari.[16]

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[14] *See* notes 1-5, 8, and 9, *supra*.

[15] Gantz, *Code-Secured Transactions and the Federal Aviation Act - A Limited Preemption*, 14 UCC L.J. 3 (1981); Sigman, *The Wild Blue Yonder: Interests in Aircraft under our Federal System*, 46 S. CAL. L. REV. 316 (1973); *Taking the Lender for a Ride: Section 1403 of the Federal Aviation Act and the Buyer in the Ordinary Course of Business*, 36 WASH. & LEE L. REV. 205 (1979); 37 J. AIR LAW & COMMERCE 252 (1971).

[16] Rule 17.1, *Rules of the Supreme Court of the United States*.

CONCLUSION

There is no conflict among the federal circuits on the issue of aircraft lien priority. The conflict caused by *Dowell* is not of sufficient importance to justify review by this Court.

This case does not present any of the special and important reasons required for the granting of a writ of certiorari. Accordingly, this Court should deny the Petition for a Writ of Certiorari.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned, being at all times hereinafter mentioned more than eighteen years of age, certifies that on the 14th day of December, 1982, true and correct copies of the foregoing Brief in Opposition were served upon the attorneys of record for General Dynamics Corporation and Victoria Bank & Trust Company by depositing the same in the United States Mail, first-class postage prepaid, certified, return receipt requested, address as follows:

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Lang, Cross, Ladon, Boldrick & Green, P.C.
1565 Frost Bank Tower
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Victoria, Texas 77901

Cecil J. Olmstead

Cecil Jay Olmstead III

APPENDIX A

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

IN RE

GARY AIRCRAFT CORPORATION,
Debtor

GARY AIRCRAFT CORPORATION,
Plaintiff

VS.

GENERAL DYNAMICS CORPORATION,
Defendant

IN PROCEEDINGS FOR
AN ARRANGEMENT NO. SA-76-BK-443-T

ADVERSARY PROCEEDING "A"

ERRATA TO MEMORANDUM ORDER AND OPINION FILED OCTOBER 4, 1979

It has come to the attention of this Court that the Memorandum Order and Opinion filed in the captioned cause on October 4, 1979 contains a typographical error with respect to the date on which Mr. Arthur W. Stewart executed a bill of sale transferring title to Airplanes N8221H and N8222H to Gary Aircraft Corporation.

On page 2 of the Memorandum Order and Opinion (third sentence of the first full paragraph) it is stated that (emphasis added):

> Thereafter, on November 7, 1979, Stewart executed a bill of sale transferring title to airplanes N8221H and N8222H to Gary Aircraft whereby Gary Aircraft acquired all interests previously held and owned by Stewart in and to such aircrafts.

It appears to the Court from the stipulations of the parties and the evidence introduced at trial that the correct date for the execution of the bills of sale in question was November 7, 1975.

It is, therefore, ORDERED that the third sentence of the second paragraph of the second page of the Memorandum Order and Opinion filed herein on October 4, 1979, be and it hereby is, corrected to read as follows, such change to be effective as of October 4, 1979:

> Thereafter, on November 7, 1975, Stewart executed a bill of sale transferring title to Airplanes N8221H and N8222H to Gary Aircraft whereby Gary Aircarft acquired all interests previously held and owned by Stewart in and to such aircrafts.

SIGNED and ENTERED this 4th day of November, 1979, at San Antonio, Texas.

/s/ BERT W. THOMPSON

HONORABLE BERT W. THOMPSON
United States Bankruptcy Judge

AGREED AND APPROVED:

/s/ JAY OLMSTEAD

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GENERAL DYNAMICS CORPORATION

APPENDIX B

AVIATION - RECORDING OF INSTRUMENTS

For text of Act see p. 281

Senate Report (Commerce Committee) No. 1060, June 5, 1964 [to accompany H.R. 8673]

House Report (Interstate and Foreign Commerce Committee) No. 1033, Dec. 12, 1963 [To accompany H.R. 8673]

Cong. Record Vol. 109 (1963)

Cong. Record Vol. 110 (1964)

DATES OF CONSIDERATION AND PASSAGE

House Dec. 17, 1963

Senate June 19, 1964

The Senate Report is set out.

Senate Report No. 1060

The Committee on Commerce, to whom was referred the bill (H.R. 8673) to amend title V of the Federal Aviation Act of 1958 to provide that the validity of an instrument the recording of which is provided for by such act shall be governed by the laws of the place in which such instrument is delivered, and for other purposes, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

PURPOSE OF THE BILL

The bill would create a uniform Federal rule which would provide that the validity of certain instruments affecting title to or interest in aircraft shall be governed by the laws of the State, District of Columbia, territory, or possession in which they are delivered. Designation of the place of delivery in the instrument would constitute presumptive evidence that the instrument was delivered at the place so specified. The bill makes clear that this legislation in no way affects the Convention on the International Recognition of Rights in Aircraft. In addition, the Administrator of the Federal Aviation Agency would be authorized to except certain instruments from the present statutory requirement that they must be notarized before recordation.

ANALYSIS AND NEED FOR LEGISLATION

The bill is similar in purpose to S. 2773, 87th Congress, which was reported favorably by this committee September 4, 1962, and which passed the Senate September 7, 1962. This legislation incorporates recommendations originally proposed by the Bar Assocation of the City of New York and is designed to facilitate identification of local laws governing the validity of aircraft instruments. It establishes a uniform Federal rule governing the validity of instruments affecting title to or interests in aircraft and related equipment. The rule would apply to all instruments subject to the recording provisions of section 503 of the Federal Aviation Act. Included would be the various instruments executed for security purposes such as conveyances, leases, mortgages, equipment trusts, conditional sales contracts, etc. Assignments, amendments, and supplements to such instruments would similarly be covered. To determine the validity of such an instrument, one would need only to look to the substantive law of the particular State in which the relevant instrument was delivered.

The fact that the determination of the validity of aircraft conveyances involved extremely cumbersome and complex procedures was recognized by the Congress when it originally enacted the Civil Aeronautics Act of 1938. That act contained a provision which provided for the establishment of a central national recording system for all instruments affecting title to or interest in civil aircraft of this country. This provision was incorporated in section 503 of the Federal Aviation Act of 1958 substantially without change. It continued the previously established recording system and provides that no conveyance or instrument affecting aircraft shall be valid until filed for recordation except as to the parties to the instrument or persons with actual knowledge of its existence. When the instrument has been filed for recordation under the law, all persons are deemed to have notice of its existence and its effect on title to the property covered thereby. Consequently, to determine whether there are any encumbrances on the aircraft, it is only necessary to consult the central file.

While existing law has assisted materially in facilitating the determination as to the validity of instruments, it does not establish the substantive validity of the instrument as proposed by this measure. Considerable doubt and confusion still exist in this field. The laws of the various States differ quite substantially with respect to the validity of various instruments. In attempting to resolve the issue as to which jurisdiction's laws should apply in determining such an instrument's validity, it is arguable that the law of one of three of the following jurisdictions is applicable: The jurisdiction in which the property is located; the jurisdiction in which the parties reside; or the jurisdiction in which the instrument was executed and delivered. As an example of the needless complexities and difficulties in making such a determination, suppose an airline desired to refinance its fleet of aircraft: each of the three rules governing jurisdiction would have to be covered. With respect

to the first, for example, it would be necessary to know the exact location of every aircraft at the precise moment the refinancing instrument was executed. Pinpointing the exact location of aircraft, many of which today fly at speeds well in excess of 500 miles an hour, is extremely difficult and at times impossible. Such unnecessary and costly procedures which one must now go through to determine the validity of aircraft instruments would be remedied by this legislation. The bill selects, and the committee is convinced, most logically, the place where the instrument is delivered. Consequently, the prospective purchaser would not only be able to readily ascertain whether encumbrances are recorded against an aircraft but would in addition be in the position to assess the validity of any instruments affecting the aircraft's title by simply consulting the law of the place where the instruments were delivered.

The bill also amends section 503(e) of the Federal Aviation Act which provides that no instrument shall be recorded unless acknowledged before a notary public. This acknowledgment requirement is unnecessarily burdensome and directed to no useful end when applied to certain conveyances and instruments which do not normally depend for validity upon acknowledgement to establish their authenticity. This would include various governmentally issued documents such as judicial decrees. Certified copies of these official records are presently admissible in the courts to determine private rights by virture of rule 44 of the Federal Rules of Civil Procedure. Consequently, more stringent proof of authenticity is unnecessary. The committee is advised that the Federal Aviation Agency has received numerous complaints from various private citizens and Government officials to the effect that this procedure is cumbersome and unnecessary. The Agency, of course, was not in a position to remedy the situation since the procedure is specifically required by statute. Since no useful purpose is served by requiring the inclusion of certain

instruments in section 503(e) the bill authorizes the Administrator of the Federal Aviation Agency to except such instruments by regulation.

TAX LIEN PROPOSAL

The Internal Revenue Code (26 U.S.C. 6321, 6323) provides that notices of Federal tax liens shall be filed with the U.S. district court or the office provided by State law in the jurisdiction where the taxpayer's property is located. The Internal Revenue Service has, as a matter of practice, only filed its notices of tax liens locally and not with the Federal Aviation Agency. It has been contended by some that the Federal Aviation Act requires the Service to file tax liens with the Federal Aviation Agency. In order to clarify this point, the Treasury Department proposed that the committee adopt in this bill an amendment to the Federal Aviation Act to specifically exclude tax liens from the recording provisions. The Air Transport Association, together with several airlines, strongly objected to the proposed amendment and expressed the view that it should be made the subject of separate hearings. While the committee appreciates the desire of the Internal Revenue Service to settle, by means of substantive legislation, the tax lien question, and agrees that this bill provides an appropriate vehicle for its resolution, the latter is extraneous to the basic objective of this legislation, viz., the establishment of a uniform Federal rule governing the validity of aircraft conveyances. Since the bill, without the amendment, is noncontroversial and provides a highly desirable clarification of law, the committee determined that it should be passed without delay. In so doing, the committee wishes to make unequivocally clear that its action should not in any way be interpreted as a judgment that the tax lien proposal either is or is not desirable or as a reflection on the validity of the arguments advanced in support thereof by the Treasury Department. The committee is simply deferring its decision in order to afford all interested parties the opportunity to fully express their views in open hearings in the near future.

CONCLUSION

The purpose of the bill is directed toward the unnecessary ambiguity, complexity, and time-consuming procedures involved in determining the validity of aircraft conveyances. Passage of this measure will minimize these problems and greatly facilitate the ease by which aircraft can be financed. The committee is convinced of the need for this legislation and accordingly urges its favorable consideration.

COST OF THE LEGISLATION

There will be no additional cost incurred by the Government as a result of favorable action on this legislation.

AGENCY COMMENTS

The Department of Justice had no comment to make on this bill.

The following written reports were received from Government agencies:

CIVIL AERONAUTICS BOARD,
Washington, D. C., January 14, 1964.

HON. WARREN G. MAGNUSON,
Chairman, Committee on Commerce,
U.S. Senate, Washington, D. C.

DEAR MR. CHAIRMAN: This is in reply to your letter of January 7, 1964, requesting the views of the Board with respect to H.R. 8673, an act to amend title V of the Federal Aviation Act of 1958 to provide that the validity of an instrument the recording of which is provided for by such act shall be governed

by the laws of the place in which such instrument is delivered, and for other purposes.

The provisions of the bill would not affect the functions and activities of the Board, but rather involve matters which are the responsibility of the Administrator of the Federal Aviation Agency. In these circumstances, the Board does not have any comments to offer with respect to the bill.

Sincerely yours,

ALAN S. BOYD,
Acting Chairman

COMPTROLLER GENERAL OF THE UNITED STATES,
Washington, January 17, 1964.

B-148101.
HON. WARREN G. MAGNUSON,
Chairman, Committee on Commerce,
U. S. Senate.

DEAR MR. CHAIRMAN: Further reference is made to your letter of January 7, 1964, acknowledged on January 8, requesting the comments of the General Accounting Office concerning H.R. 8673, 88th Congress, 1st session, entitled "An act to amend title V of the Federal Aviation Act of 1958 to provide that the validity of an instrument the recording of which is provided for by such act shall be governed by the laws of the place in which such instrument is delivered, and for other purposes."

We have no special information or knowledge as to the desirability of the proposed legislation and, therefore, we make no recommendation with respect to its enactment.

Sincerely yours,

JOSEPH CAMPBELL,
Comptroller General of the United States.

FEDERAL AVIATION AGENCY,
Washington, D. C., January 17, 1964.

HON. WARREN G. MAGNUSON,
Chairman Committee on Commerce,
U. S. Senate, Washington, D. C.

DEAR MR. CHAIRMAN: This is in reply to your request of January 7, 1964, for the views of this Agency with respect to H.R. 8673, an act to amend title V of the Federal Aviation Act of 1958 to provide that the validity of an instrument the recording of which is provided for by such act shall be governed by the laws of the place in which such instrument is delivered, and for other purposes.

Title V of the Federal Aviation Act establishes a central recording system for all instruments affecting title to or interest in civil aircraft of the United States. Section 503 provides that no conveyance or instrument affecting title to an aircraft shall be valid until filed for recordation, except as to parties to the instrument or those with actual notice of its existence.

While recordation does afford notice to the world of the existence of an instrument affecting title, it does not purport to establish the substantive validity of the instrument. As is the case with other recording systems, substantive validity of a recorded instrument remains a question of local law. Determining which local law applies to the instruments is extremely difficult, however, when one is dealing with highly mobile property such as aircraft. In the existing state of law, therefore, the parties executing an instrument affecting aircraft, or prospective purchasers of aircraft seeking to determine the validity of encumbrances recorded against the property may be faced with considerable uncertainty as to the State law applicable.

Section 1 of H.R. 8673 has as its sole purpose the identification of the local law which will govern the validity of recorded

instruments. It selects, we believe logically, the law of the place where the instrument was delivered. Thus, the prospective purchaser who finds an outstanding mortgage recorded against an aircraft will, by consulting the law of the place where the mortgage was delivered, be in a position to assess its validity. Likewise, the parties to a mortgage need only to conform their instrument to the law of the intended place of delivery to insure its validity.

We believe H.R. 8673 has been carefully tailored to meet the precise problem presented, and we are in favor of its enactment. It will not interfere with our administration of the recording system and promises to increase the utility and effectiveness of that system.

Sections 2 of H.R. 8673 amends present section 503(e) of the Federal Aviation Act of 1958, which requires that "no conveyance or other instrument shall be recorded unless it shall have been acknowledged before a notary public or other officer authorized by the law of the United States, or of a State, Territory, or possession thereof, or the District of Columbia, to take acknowledgement of deeds." This requirement is unnecessarily burdensome and directed to no useful end when applied to certain conveyances or instruments of title which are not normally and do not depend for validity upon being acknowledged before a notary public to establish their authenticity, for example governmentally issued documents such as judicial decrees. Under rule 44 of the Federal Rules of Civil Procedure, properly certified copies of these official records are admissible in courts of law to determine private rights. It seems unnecessary to require more stringent proof of authenticity for recording purposes.

The Agency has engaged in a good deal of correspondence regarding this requirement with both citizens and Government officials to all of whom the procedure seems cumbersome and

unnecessary. We have had to take the position in replying to this correspondence that section 503(e) of the act, as presently worded, leaves us no choice in the matter. We believe the recording system could be administered more efficiently and simply if we had that choice. We therefore recommended to the House Committee that section 503(e) of the Federal Aviation Act of 1958 be amended to permit the Administrator of the Federal Aviation Agency to determine what instruments or conveyances must be so acknowledged before recordation. We suggested that this could be accomplished by inserting the phrase "Except as the Administrator may by regulation prescribe," as the introductory phrase to the sentence now serving as section 503(e) of the Federal Aviation Act of 1958. Section 2 of H.R. 8673 incorporates this recommendation and we favor its enactment. The Bureau of the Budget has advised that there is no objection from the standpoint of the administration's program to the submission of this report to your committee.

Sincerely,

N. E. HALABY, *Administrator.*

GENERAL COUNSEL OF THE DEPARTMENT OF COMMERCE,
Washington, D. C., March 25, 1964.

HON. WARREN G. MAGNUSON,
Chairman, Committee on Commerce,
U. S. Senate,
Washington, D. C.

DEAR MR. CHAIRMAN: This is in further reply to your request for the views of this Department concerning H.R. 8673, an act to amend title V of the Federal Aviation Act of 1958 to

provide that the validity of an instrument the recording of which is provided for by such act shall be governed by the laws of the place in which such instrument is delivered, and for other purposes.

The principal purpose of H.R. 8673 is to amend title V of the Federal Aviation Act of 1958 by adding a new section providing that the validity of any credit instrument affecting title to or interest in civil aircraft and related equipment, the recording of which is provided for under section 503 of the act, shall be governed by the laws of the place in which such instrument is delivered.

At present there is no certainty with respect to the validity of credit instruments affecting civil aircraft and related equipment. Each State has its own requirements concerning the recordation of credit instruments and the validity of contracts executed in other jurisdictions.

H.R. 8673 would tend to encourage lending institutions to extend credit to the aviation industry by establishing certainty as to the validity of credit instruments secured by aircraft, and by reducing the costs incident to multiple filing and enforcing liens under the present system.

This Department, therefore, recommends enactment of H.R. 8673.

We have been advised by the Bureau of the Budget that there would be no objection to the submission of our report from the standpoint of the administration's program.

Sincerely,

ROBERT E. GILES.

THE GENERAL COUNSEL OF THE TREASURY
Washington, D. C., February 28, 1964.

HON. WARREN G. MAGNUSON,
Chairman, Committee on Commerce,
U. S. Senate, Washington, D. C.

DEAR MR. CHAIRMAN: Reference is made to your request for the views of this Department on H.R. 8673, to amend title V of the Federal Aviation Act of 1958 to provide that the validity of an instrument the recording of which is provided for by such act shall be governed by the laws of the place in which such instrument is delivered, and for other purposes, and an amendment adopted by your committee to the bill.

H.R. 8673 would add new section 506 to the Federal Aviation Act to provide that the validity of any instrument the recording of which is provided for by section 503 of such act shall be governed by the laws of the State, District of Columbia, territory, or possession of the United States wherein it is delivered. The bill would also amend section 503 of the act to authorize the Administrator of the Federal Aviation Agency to except certain instruments from the necessity of having to be notarized before recordation. The amendment adopted by your committee would provide as follows:

> "Sec.---. Section 503(a) of the Federal Aviation Act of 1958 is amended by adding thereto the following new subsection:
>
> "'---. Any tax lien arising under the internal revenue laws of the United States, the District of Columbia, any State of the United States or any political subdivision thereof, and the possessions of the United States, are specifically excluded from the recording provisions of this section.'"

Under the present act the term "conveyance" is defined in section 101(17) as including "any instrument affecting title to, or interest in, property." The regulations of the Federal Aviation Agency (14 CFR 503.2(a)) provide that the term "conveyance" includes a "notice of tax lien." The regulations of the Agency further provide that to be eligible for recordation a conveyance must describe the aircraft, propellers, or spare parts affected by the conveyance or lien.

The regulations of the Federal Aviation Agency are considered to be inconsistent with the provisions of sections 6321 and 6323 of the Internal Revenue Code and the regulations prescribed thereunder (26 CFR 301.6321-1, 301.6323-1). The Federal tax lien is a general lien attaching to all property and rights to property belonging to the taxpayer and the notice of the lien is not required to describe the property to which it attaches, nor is it required that the notice be filed in specific offices to cover individual pieces of a taxpayer's property. Notices of tax liens are filed in the offices designated by the States in which property subject to the lien is located, or, if the State has not by law designated an office for the filing of notices of tax liens, they are filed in the office of the clerk of the U.S. district court for the judicial district in which the property subject to the lien is situated. Notices of tax liens to cover all personal property are filed in a designated office where the taxpayer is domiciled.

The filing of the notice of Federal tax lien as prescribed by section 6323 of the Internal Revenue Code is a time-honored procedure which has been upheld by the courts over the years cf., *United States v. Union Central Life Insurance Company* (1961) 368 U.S. 291. Any law which could be interpreted to require that the notice of tax lien enumerate the specific property to which it attaches would create confusion where none should exist. Thus, the enactment of H.R. 8673 without your committee's amendment specifically excluding all Federal, State, and local tax

liens from the recordation provisions of the Federal Aviation Act would lead to further confusion and ambiguity.

The Department submitted a report along the same lines as set forth herein on S. 475 (88th Cong., 1st sess.), a bill which would have accomplished the same purposes as H.R. 8673 and which was similar to S. 2773 (87th Cong., 2d sess.). Your committee in its Report No. 1995 to accompany S. 2773 made the following comments:

"The problems in recording notices of tax liens prove particularly troublesome, since the Internal Revenue Code (26 U.S.C. 6321, 6323) provides that notices of Federal tax liens shall be filed with the U.S. district court, or the office provided by State law in the jurisdiction where the taxpayer's property is located. The Internal Revenue Service has, as a matter of practice, only filed its notices of tax liens locally and not with the Federal Aviation Agency. Accordingly, a purchaser in examining the central filing system maintained by the Agency could easily be misled in assuming that the absence of tax lien notices in the Agency's file meant that no such lien existed. To remedy this situation, two alternative solutions are presented: An amendment to the Federal Aviation Act to exclude tax liens from the recording provisions or an amendment to the Internal Revenue Code requiring that Federal tax liens must be filed with the Federal Aviation Agency. Your committee is convinced that an amendment to the Federal Aviation Act is clearly the most practical and logical choice. A Federal tax lien is a general charge on all real and personal property of a delinquent taxpayer and does not describe specific property. Consequently the Internal Revenue Service would have no practical means of ascertaining which of the many delinquent taxpayers owned aircraft. It would have to either file every tax lien with the Agency or be required to make a most needless and time-consuming search of the Agency's aircraft registration records. In addition, since a lien is a charge on after-acquired property,

effective operation of the recording system would require that all new applicants for aircraft registration certificates be checked against the current delinquent list in order that existing liens could be recorded against the newly acquired aircraft. There is also the possibility that in creating an exception for aircraft to the general scheme of tax enforcement, questions would be raised regarding the sufficiency of local notices of tax liens against other forms of property."

The Department concurs with the views expressed in the foregoing report and if H.R. 8673 is amended as recommended by your committee the Department would have no objection to its enactment. Otherwise, the Department would be strongly opposed to the proposed legislation.

The Department has been previously advised by the Bureau of the Budget that there was no objection from the standpoint of the administration's program to the submission of a similar report on S. 475, a similar bill.

Sincerely yours,

G. D'ANDELOT BELIN,
General Counsel.